

**California Environmental Protection Agency
Air Resources Board**

Marine Notice 2007-3 (4/2007)

Ocean-Going Vessel Auxiliary Diesel Engine Regulation Responsible Parties Under Charter Arrangements

This advisory clarifies who is the responsible party for the purposes of complying with the requirements of the State of California Ocean-Going Vessel Auxiliary Diesel Engine Regulation.

Background

The State of California Ocean-Going Vessel Auxiliary Diesel Engine Regulation ("regulation") imposes air emission limits on you when you operate vessels in Regulated California Waters (a zone approximately 24 nautical miles seaward of the California baseline; see Attachment A), and moor, dock, or otherwise visit a California port, roadstead, or terminal facility ("port"). The requirements in this regulation became effective on January 1, 2007, and can be found in title 13, California Code of Regulations (CCR), §2299.1, and title 17, CCR, §93118. It can also be found at ARB's website at <http://www.arb.ca.gov/regact/marine2005/marine2005.htm>.

The regulation limits emission rates of diesel particulate matter (PM), oxides of nitrogen (NOx), and oxides of sulfur (SOx) from auxiliary diesel engines and diesel-electric engines on ocean-going vessels to levels equivalent to using the following fuels:

Beginning January 1, 2007: (1) marine gas oil (MGO); or
(2) marine diesel oil (MDO) with no more than 0.5% sulfur by weight

Beginning January 1, 2010: MGO with a sulfur content of no more than 0.1 percent by weight.

The regulation also includes recordkeeping requirements relating to the fuels used in Regulated California Waters, which are discussed in Marine Notice 2006-3, dated December 2006 (see <http://www.arb.ca.gov/ports/marinevess/documents/122806ogv3.pdf>).

ADVISORY

The regulation applies to any person who owns, operates, charters, rents, or leases ocean-going vessels subject to the regulation. If violations of the emission limits or recordkeeping requirements in the regulation are found, the Air Resources Board (ARB) can potentially hold any of these parties responsible for the violations based on the results of an investigation conducted to determine the responsible parties. In most cases, prime responsibility for compliance will lie with the parties in direct control of the vessel's operation (the "owner/operator**"). However, other parties may be held responsible if their actions also contributed to the violation.

Typically, if inspectors find a violation of the regulation, the vessel officers and crew operating the vessel will be contacted first to determine how and why a violation occurred. Depending on the situation, their investigation may extend to include the company or other parties directing the

vessel's operations, persons chartering or leasing the vessel, and the actual owners of the vessel.

The responsible parties under charter arrangements will depend, in part, on the type of contract. Listed below are some typical charter arrangements, and the likely responsible parties. The following list does not represent all possible charter arrangements, and the party or parties that ARB ultimately holds responsible for compliance with the regulation may vary, depending on the circumstances.

Voyage (Spot) Charter: Under this arrangement, the charterer typically enters into an agreement with the vessel owner/operator to carry cargo over a single voyage (voyage charterer). The vessel owner/operator typically supplies or makes arrangements for the officers and crew and is generally responsible for the operation of the vessel. In these cases, ARB expects the voyage charterer to take reasonably prudent precautions and steps to ensure that the vessel owner/operator is prepared to comply with the regulation while operating the vessel in Regulated California Waters during that voyage. "Reasonably prudent precautions" are determined on a case-by-case basis and are heavily dependent on the circumstances of each individual case. If the charterer can demonstrate that the violation occurred despite the voyage charterer's reasonably prudent precautions, ARB will generally hold the vessel owner/operator as primarily responsible for violations of the regulation.

Time Charter: Under this type of contract, the charterer typically enters into an agreement with the vessel owner/operator to carry cargo over an extended period of time, ranging from months to years (time charterer). The vessel owner/operator typically supplies or makes arrangements for the officers and crew and is generally responsible for the operation of the vessel. However, a time charterer typically has a greater influence over the vessel than a voyage charterer. The time charterer typically directs the vessel's voyages and often pays for voyage related costs, including bunker fuel. Hence, the time charterer is more likely to share responsibility for violations of the regulation with the owner/operator. In particular, if the time charterer directs the vessel's fuel purchases, it may share responsibility for a violation of the regulation's emission limits resulting from the use of noncompliance fuel. For violations of the recordkeeping requirements, the vessel owner/operator would more likely be the responsible party, particularly if they were made aware of the regulation by the time charterer. However, the time charterer could voluntarily undertake the retention of documentation in addition to, along with, or on behalf of the owner/operator.

Bareboat (Demise Charter): Under this type of contract, the actual owner of the vessel completely surrenders possession and control of the vessel to another party (the demise charterer) over an extended period of time. The demise charterer typically operates the vessel; effectively becomes the "owner/operator" of the vessel; and, as such, is generally fully responsible for compliance with port state regulations, including responsibility for violations of the California regulation. However, if the demise charterer then charters the vessel to a third party (demise sub-charterer) and releases full custody and control to that demise sub-charterer, ARB will most likely hold the demise sub-charterer responsible for violations of the regulation. If multiple demise sub-charters occur for the same vessel, ARB will most likely hold responsible for violations of the regulation the last demise sub-charterer in the chain that is in possession and control of the vessel when a violation of the regulation occurs.

* In this advisory, the term "owner/operator" means a person or company that has direct control over a vessel's operation whether or not they actually own the vessel. If such an owner/operator does not actually own the ship, they are commonly referred to as a "*disponent owner*," or "*owner pro hac vice*" (owner for this particular occasion).

Attachment A

Regulated California Waters

“Regulated California Waters” means all of the following:

- (A) all California internal waters;
- (B) all California estuarine waters;
- (C) all California ports, roadsteads, and terminal facilities (collectively “ports”)
- (D) all waters within 3 nautical miles of the California baseline, starting at the California-Oregon border and ending at the California-Mexico border at the Pacific Ocean, inclusive;
- (E) all waters within 12 nautical miles of the California baseline, starting at the California-Oregon border and ending at the California-Mexico border at the Pacific Ocean, inclusive;
- (F) all waters within 24 nautical miles of the California baseline, starting at the California-Oregon border to 34.43 degrees North, 121.12 degrees West, inclusive; and
- (G) all waters within the area, not including any islands, between the California baseline and a line starting at 34.43 degrees North, 121.12 degrees West; thence to 33.50 degrees North, 118.58 degrees West; thence to 32.48 degrees North, 117.67 degrees West; and ending at the California-Mexico border at the Pacific Ocean, inclusive.

“Regulated California Waters” is shown on the map below as indicated (note: chart is not to scale).

